

enhance consumer welfare by increasing both local and long distance competition. See Application at 73-93. The PUC agrees that Verizon has “open[ed] its local exchange and exchange access markets in Pennsylvania to competition”; that those markets “are irreversibly open to competition” and “will remain open to competition . . . after the 271 application is granted”; and that “allowing Verizon PA into the in-region long distance market will provide additional public benefit.” PUC Consultative Report at 1-2, 4. A handful of CLECs quibble with some or all of these findings, but their arguments are unavailing.⁶³

A. Local Competition in Pennsylvania Is Thriving and Will Increase as a Result of Verizon’s Entry.

Verizon’s Application proves beyond dispute that local markets in Pennsylvania are open and that competition is flourishing. See DOJ Eval. at 4 (“th[e] aggregate level of CLEC penetration . . . is greater than the level in New York and Massachusetts at the time applications for those states were filed”). The PUC likewise found that “competition in the local telephone market continues to grow at a rapid pace and that the local telephone service market for both residential and business customers is irreversibly open.” PUC Consultative Report at 21. And this competition continues to grow: through June 2001, competitors are serving a very conservatively estimated 1.1 million lines, about 60 percent of which are facilities-based and about 35 percent of which are residential. See Reply Cmts. Atts. B & C.

Only AT&T takes issue with the conclusion that local markets in Pennsylvania have been irreversibly opened to competition. See AT&T at 66-72.⁶⁴ Specifically, AT&T claims that

⁶³ The Communications Workers of America (at 10-14) points to ongoing labor-management disputes with Verizon’s yellow pages subsidiary and Verizon Wireless. These disputes, which the CWA notes are currently the subject of litigation and arbitration, have no bearing on the Commission’s review of this Application. See Texas Order ¶ 431 & n.1263.

⁶⁴ WorldCom argues that Verizon’s Local Service Provider Protection Program is anticompetitive and has caused it difficulties in signing up local customers. See WorldCom at

“residential competition is minimal” because CLECs currently serve just over 7 percent of the total residential lines in Verizon’s service territory. AT&T at 66-67, 70-71.⁶⁵ But, as the Commission has repeatedly found, the 1996 Act does not “require that a BOC lose a specific percentage of its market share . . . before . . . BOC entry is consistent with the public interest.” Michigan Order ¶ 391; see Massachusetts Order ¶ 235; Kansas/Oklahoma Order ¶ 268; Texas Order ¶ 419; New York Order ¶ 427.⁶⁶ In any event, residential competition in Pennsylvania is more advanced than in any other state where the Commission has approved a section 271 application. See Reply Cmts. Att. C. In proportion to the number of access lines in those states, CLECs in Pennsylvania have almost 170 percent more residential lines than CLECs had in New York and almost 95 percent more residential lines than CLECs had in both Texas and Massachusetts at the time those applications were filed. See id.

29-30. Verizon, however, is required to offer this program under anti-slamming regulations in Pennsylvania. Moreover, participation in the program is at the request of the customer, and Verizon does not enroll end users in this program by default. See Lacouture/Ruesterholz Reply Decl. ¶ 178. WorldCom’s claim that end users’ decisions to enroll in this program impedes its ability to sign up local customers is patently implausible given the prevalence of the comparable PIC freeze in the highly competitive long distance market. In any event, WorldCom has filed a complaint regarding Verizon’s Local Service Provider Protection Program before the PUC. See MCI WorldCom Communications, Inc. v. Verizon Pennsylvania, Inc., Docket No. C-00015149 (Pa. Pub. Util. Comm’n filed Mar. 22, 2001). That is the appropriate proceeding for the resolution of this issue.

⁶⁵ AT&T further contends that this percentage is overstated because AT&T only has data on the number of residential lines (about 4.3 million) that Verizon served in December 1999; it claims that current numbers “would clearly be far higher.” AT&T at 70 n.75. In fact, because CLECs are taking customers from Verizon, the number of Verizon residential lines is *lower* than in December 1999 and currently stands at about 4 million. Corrected Ex Parte Letter from Clint Odom, Verizon, to Magalie Salas, FCC, CC Docket No. 01-138 (July 20, 2001). Moreover, AT&T ignores that the data Verizon uses to estimate CLEC facilities-based lines necessarily *understates* the number of CLEC lines. See Taylor Decl. ¶ 36 n.52.

⁶⁶ AT&T also spends a substantial portion of its comments criticizing SWBT’s post-approval actions in Texas. See AT&T at 76-80. It is quite telling that AT&T does not point to such examples by Verizon in either New York – where Verizon has been providing long distance service for longer than any other BOC – or Massachusetts. The record is clear that Verizon’s entry in those states has been highly beneficial to consumers. See, e.g., Application at 90-91.

Moreover, Verizon has demonstrated – and neither AT&T nor any other party disputes – that local competition has *increased* in Verizon’s states following its long distance entry. In fact, AT&T’s own chairman has recently proclaimed that “a recent report found that residential consumers in New York have saved up to \$416 million dollars a year by switching to competitors for local telephone service. That is the true accomplishment of the 1996 Act.”⁶⁷ The Commission has likewise found that “[s]tates with long distance approval show [the] greatest competitive activity.”⁶⁸ And Chairman Powell has stated that “[w]e see a correlation between the process for approving applications and growing robustness in the markets.”⁶⁹ Indeed, since Verizon’s entry in New York, the number of local lines served by competitors there has increased at least 125 percent, including a 440 percent increase in UNE platform lines and a 50 percent increase in facilities-based lines. See Taylor Decl. ¶ 30.

B. Local Markets in Pennsylvania Will Remain Open After Verizon Obtains Section 271 Approval.

Verizon’s Application also shows that there is every assurance that local markets in Pennsylvania will remain open after Verizon obtains section 271 approval. All parties recognize that the Pennsylvania PUC has actively promoted local competition; that Verizon is subject to comprehensive performance reporting; and that Verizon’s Performance Assurance Plan provides substantial incentives against backsliding. The PUC, which “has been extensively involved in implementing the section 271 statutory requirements,” agrees that “current metrics and remedies

⁶⁷ State of Competition in the Telecommunications Industry: Hearing Before the Senate Comm. on Commerce, Science, and Transportation, 107th Cong. (June 19, 2001) (testimony by C. Michael Armstrong, Chairman and CEO, AT&T Corp.).

⁶⁸ FCC News Release, Federal Communications Commission Releases Latest Data on Local Telephone Competition (May 21, 2001).

⁶⁹ Rodney L. Pringle, Powell Says Innovation Will Drive Telecom Upswing, Communications Today, June 6, 2001.

are adequate to ensure continued 271 compliance.” PUC Consultative Report at 1, 258.

Although some CLECs disagree on these points, their arguments are wide of the mark.

1. Performance Measures.

Verizon is subject to extensive performance reporting requirements in Pennsylvania, which substantially overlap with those in place in New York and Massachusetts and which “go beyond 271 requirements.” Id. at 258; Guerard/Canny/DeVito Decl. ¶¶ 17-19. The PUC is continuing to update the performance measurements to reflect new developments in the marketplace, as well as the agreement between Verizon and the CLECs to adopt the current New York and Massachusetts measurements for use in Pennsylvania. See PUC Consultative Report at 258; Guerard/Canny/DeVito Decl. ¶ 21. And, as in New York and Massachusetts, these performance measurements were independently reviewed and validated by KPMG, which not only replicated nearly every performance measurement it assessed, but also found that CLECs were unable to substantiate those claims that they raised with respect to Verizon’s reporting of its performance measurements. See Guerard/Canny/DeVito Decl. ¶¶ 141-145.⁷⁰

AT&T and WorldCom now claim that Verizon’s reporting requirements and standards are inadequate. See AT&T at 58-61; AT&T’s Bloss/Nurse Decl.; WorldCom at 10-14; WorldCom’s Kinard Decl. As explained below, and in the accompanying reply declaration,

⁷⁰ Although AT&T complains that KPMG did not assess the validity of the data Verizon used to calculate the performance measurements, see AT&T at 59; AT&T’s Bloss/Nurse Decl. ¶¶ 46-53, when CLECs were offered an opportunity to compare their data with Verizon’s, only four CLECs took up that opportunity – even then, nearly half of the time they failed to provide any data to support their claims. See KPMG Consulting, Pennsylvania Commercial Availability Review – Final Report – Metrics 5, 25 (May 31, 2001) (App. B, Tab F-5) (“KPMG Metrics Report”). When CLECs did provide data, KPMG “found no instances where CLEC identified discrepancies with the Verizon Pennsylvania reported values could be fully substantiated.” Id. Instead, KPMG found that disputes turned on the CLECs’ interpretation of a business rule or the systems that CLECs used for capturing data, rather than on the integrity of Verizon’s data. See id. at 25; see also Guerard/Canny/DeVito Reply Decl. ¶¶ 40-41.

these claims are misplaced.⁷¹ In any event, Verizon and the CLECs have reached agreement to import into Pennsylvania the New York performance measurements, which the Commission has reviewed and approved three times. See Guerard/Canny/DeVito Decl. ¶ 21; see also PUC Consultative Report at 258. On July 16, 2001, Verizon submitted a proposal to the Pennsylvania PUC for the adoption of the New York measurements, which resolves all of the complaints that AT&T and WorldCom raise regarding measurements that are reported in New York but not Pennsylvania. See Guerard/Canny/DeVito Reply Decl. ¶ 8 (describing that proposal).⁷²

Among AT&T's and WorldCom's specific complaints with the Pennsylvania measurements is that Verizon does not report on "achieved" flow through, which measures the percentage of orders eligible to flow through that do flow through. See AT&T at 57; AT&T's Bloss/Nurse Decl. ¶ 25; WorldCom at 10; WorldCom's Kinard Decl. ¶ 9. Verizon, however, currently reports two other flow-through measures: "total" and "simple" flow through.⁷³ The Commission has never required a carrier to report achieved flow through and did not rely on that measurement in the New York, Massachusetts, or Connecticut orders. See Connecticut Order ¶¶ 55-56; Massachusetts Order ¶¶ 78-79 & n.242; New York Order ¶ 162 & n.494. In fact, the Commission has looked to achieved flow through only when the BOC did not report total flow

⁷¹ Indeed, it is important to recognize that the proceeding the Pennsylvania PUC has initiated is part of an ongoing, multi-year effort, involving the PUC, Verizon, and CLECs, to develop measurements particularly suited to Pennsylvania. See Guerard/Canny/DeVito Decl. ¶¶ 15-19. Indeed, the Pennsylvania guidelines contain many measurements that do not appear in New York and often require Verizon to meet a higher standard than in New York. See id. ¶ 17.

⁷² That proposal also contains a new measurement that tracks the accuracy of directory listings. See Guerard/Canny/DeVito Reply Decl. ¶¶ 8, 16; see also Broadslate at 20 (urging the creation of such a measurement); OCA at 25 (same); Lacouture/Ruesterholz Reply Decl. ¶ 150.

⁷³ Total flow through (OR-5-01) measures the percentage of all valid, electronically submitted orders that flow through, while simple flow through (OR-5-02) measures the percentage of all electronically submitted basic POTS service orders that flow through. See Guerard/Canny/DeVito Reply Decl. ¶ 10; see also id. ¶ 11 (contrasting achieved and total flow through).

through, and there the CLECs argued that *total* flow through is the more important measure of performance, because it measures the extent to which all electronically submitted orders are subject to manual handling. See Texas Order ¶ 180 n.490; see also Kansas/Oklahoma Order ¶ 144.⁷⁴

AT&T and WorldCom similarly complain that Verizon does not report on the timeliness of its billing completion notifiers. See AT&T's Bloss/Nurse Decl. ¶ 24; WorldCom at 10-11; WorldCom's Kinard Decl. ¶ 11. Verizon has agreed to such a measurement going forward and has provided performance results under this measurement in this proceeding. Those results are excellent. See McLean/Wierzbicki/Webster Reply Decl. ¶ 74; McLean/Wierzbicki/Webster Decl. ¶¶ 103-106. In addition, the PUC is addressing this issue and has stated that "the further metrics and remedies proceeding established pursuant to the Functional Structural Separation Order⁷⁵ is an appropriate forum to address the addition of a BCN metric with remedies." PUC Consultative Report at 94. In any event, AT&T's and WorldCom's claims here are hardly credible given that Verizon initially proposed the adoption of a billing completion notifier measurement and it was CLECs, including AT&T and WorldCom, that argued to the Pennsylvania PUC that Verizon's performance in reporting provisioning completion notifiers should be measured instead. See Dec. 31, 1999 Order at 60-61. Based on these CLECs'

⁷⁴ See also AT&T's Texas 271 Dalton/DeYoung Decl. ¶ 154, CC Docket No. 00-65 (FCC filed Jan. 31, 2000) ("From the practical perspective of a CLEC, the true flow-through rate is the extent to which electronic orders are subjected to manual handling."); AT&T Missouri 271 Comments at 48 n.38, CC Docket No. 01-88 (FCC filed Apr. 24, 2001) (criticizing SWBT for measuring "the flow-through rate only as a percentage of those CLEC orders that SWBT has *designed* to flow through, while ignoring additional CLEC order types").

⁷⁵ Structural Separation of Bell Atlantic-Pennsylvania, Inc. Retail and Wholesale Operations, Opinion and Order, Docket No. M-00001353 (Pa. Pub. Util. Comm'n entered Apr. 11, 2001) (App. B, Tab P-10).

requests, the PUC adopted a provisioning completion notifier measurement, rather than the billing completion notifier measurement that Verizon had proposed. See id. at 61-62.⁷⁶

AT&T's complaint that Verizon has no line splitting measurements is similarly baseless. See AT&T at 57; AT&T's Bloss/Nurse Decl. ¶¶ 18-19. Verizon permits CLECs in Pennsylvania to engage in line splitting in the same manner as in Massachusetts, through the use of existing UNEs. See Lacouture/Ruesterholz Decl. ¶¶ 230-239. To the extent that Verizon receives orders for line splitting today, those orders will be included in the line sharing performance measurements. See Guerard/Canny/DeVito Reply Decl. ¶ 17. Separate line splitting measurements, therefore, are largely superfluous. Nonetheless, Verizon and the CLECs, through the New York Carrier Working Group, have reached consensus on new line splitting measurements, which would be imported into Pennsylvania under Verizon's proposal for using the New York measurements in Pennsylvania. See id. ¶¶ 17-18; see also Lacouture/Ruesterholz Reply Decl. ¶¶ 102-104.

AT&T also takes issue with the manner in which Verizon reports certain performance measurements.⁷⁷ For example, AT&T argues that Verizon has improperly changed the retail

⁷⁶ Although WorldCom criticizes this measurement, see WorldCom at 11; WorldCom's Kinard Decl. ¶ 13, the same business rules apply to the provisioning completion notifier timeliness measurement in use in New York, Massachusetts, and Connecticut, see Guerard/Canny/DeVito Reply Decl. ¶ 15.

⁷⁷ AT&T notes that Verizon informs the Pennsylvania PUC and CLECs each month if it has determined that enhancements to its performance measurement calculations are required to ensure strict compliance with the terms of the business rules. See AT&T's Bloss/Nurse Decl. ¶¶ 38-41. These monthly reports, which go beyond what Verizon provides to state commissions in New York, Massachusetts, and Connecticut, are a result of Verizon's proactive evaluation of its performance measurements. See Guerard/Canny/DeVito Reply Decl. ¶¶ 30-31. Although AT&T claims that "Verizon's misreporting resulted in its reporting of more favorable results," AT&T's Bloss/Nurse Decl. ¶ 41, the evidence to which it points actually shows the opposite – that there was no impact on the reported results or that any impact was adverse to Verizon, see Guerard/Canny/DeVito Reply Decl. ¶ 32.

analog for the Product Service and Availability Response Time measurement (PO-1-04). See AT&T's Bloss/Nurse Decl. ¶¶ 36-37. Yet, in August 2000, this transaction was enhanced at the CLECs' request to provide them in one transaction with information that would take Verizon's retail representatives six separate transactions to obtain; Verizon altered the retail analog to conform to the greater information provided to CLECs. See Guerard/Canny/DeVito Decl. ¶ 40; Guerard/Canny/DeVito Reply Decl. ¶ 28. AT&T never disputes Verizon's explanation that this change yields a better retail analog; instead, it argues that Verizon must continue reporting (and presumably making payments to AT&T) under a measurement that all acknowledge is thoroughly flawed. See Guerard/Canny/DeVito Reply Decl. ¶ 28. AT&T likewise complains that Verizon uses sampling to report Percent Accurate LSRCs (OR-6-03) when the business rules require reporting based on every LSRC. See AT&T at 58; AT&T's Bloss/Nurse Decl. ¶¶ 33-35. As Verizon has explained, its systems are currently unable to measure OR-6-03 for every order, it is working to implement the necessary system changes to comply with the business rule, and in the interim it is using the sampling method approved for OR-6-01 and OR-6-02 to report OR-6-03. See Guerard/Canny/DeVito Decl. ¶ 62. This same sampling method is currently used in New York and Massachusetts, and was used in those states at the time the Commission approved those applications. See Guerard/Canny/DeVito Reply Decl. ¶ 21.⁷⁸

AT&T and WorldCom also argue that Verizon's procedures (known as the metrics change control process) for implementing changes to its performance measurements are flawed. See AT&T at 60; AT&T's Bloss/Nurse Decl. ¶¶ 64-68; WorldCom at 13; WorldCom's Kinard

⁷⁸ The Communications Workers of America contends that, in New York, Verizon has misreported its service quality to the New York PSC. See CWA at 7-9. The New York PSC has already rejected those claims. Petition of the Communications Workers of America, Order Adopting Report at 2, Case 01-C-0440 (N.Y. Pub. Serv. Comm'n May 17, 2001). The Commission should likewise ignore the CWA's baseless allegations.

Decl. ¶ 22; see also DOJ Eval. at 15 n.56. These claims are without merit. Verizon's metrics change control process is the same in Pennsylvania as it is in New York, Massachusetts, and Connecticut. In addition, Verizon developed a new metrics change control process in September 2000, and KPMG validated that Verizon adhered to the new procedures for evaluating metrics change proposals. KPMG's additional testing of the metrics change control process in New Jersey – which is identical to the process in both Pennsylvania and New York – confirms that Verizon's process is more than adequate. See Guerard/Canny/DeVito Decl. ¶ 139. Finally, Verizon began employing a new metrics change notification process in Pennsylvania with the May data month, and AT&T has stated that using this notification process satisfies its concerns. See Guerard/Canny/DeVito Reply Decl. ¶ 36; see also Guerard/Canny/DeVito Decl. ¶ 140.

2. Performance Assurance Plan.

All parties acknowledge that the Pennsylvania PUC has aggressively worked to open local telephone markets since before the passage of the 1996 Act and to ensure that the market remains open in the future. The DOJ expressly recognizes that the PUC “has shown a commitment to implementing market-opening measures and has taken significant steps to introduce ongoing procedures designed to ensure that Pennsylvania consumers will continue to reap the benefits of entry in their state.” DOJ Eval. at 2. There is no basis to the claims by the long distance incumbents and others that the Commission should supplant the PUC's ongoing role in ensuring that local markets in Pennsylvania remain open to competition.

Verizon is subject to a self-executing Performance Assurance Plan that the Pennsylvania PUC designed, and has refined, through nearly three years of proceedings. The PUC has found that this Plan provides “adequate financial incentives [for Verizon] to continue to meet its legal obligations after it has received approval under section 271.” PUC Consultative Report at 3. The Plan subjects Verizon to a maximum potential liability greater than the Commission found

sufficient in New York and Massachusetts. See Guerard/Canny/DeVito Decl. ¶ 162; Guerard/Canny/DeVito Reply Decl. ¶ 58. Moreover, contrary to claims by AT&T and WorldCom, Verizon would have paid *more* under the current Plan, as a percentage of net return, in Pennsylvania in 2000 than it paid in New York under the New York Plan in that year. See Guerard/Canny/DeVito Reply Decl. ¶ 49; AT&T's Bloss/Nurse Decl. ¶ 86; WorldCom at 16; WorldCom's Kinard Decl. ¶ 32. In short, although the Pennsylvania Plan has a different structure than the New York and Massachusetts Plans, it provides no less "assurance that the local market will remain open after [Verizon] receives section 271 authorization." New York Order ¶ 429; see Massachusetts Order ¶ 240 ("Plans may vary . . . , and there is no one way to demonstrate assurance.").⁷⁹

Moreover, contrary to AT&T's claims, Verizon's performance improved markedly under the Plan that the Pennsylvania PUC originally established. See AT&T's Bloss/Nurse Decl. ¶ 73. Verizon's Tier II remedy payments in March 2001 were 25 percent lower than its payments in December 2000, and its payments had consistently declined between those two dates. See Guerard/Canny/DeVito Reply Decl. ¶ 50.⁸⁰ In addition, Verizon has provided excellent service

⁷⁹ AT&T and WorldCom argue that, because Verizon has not agreed to abandon its legal challenge to the Plan, Verizon cannot rely on the Plan. See AT&T at 64-65; AT&T's Bloss/Nurse Decl. ¶¶ 12-14; WorldCom at 17-18; see also DOJ Eval. at 16 n.63. AT&T raised this exact same complaint before the Pennsylvania PUC, which found that Verizon "has fully complied" with the requirement that it "withdraw[] . . . its pending appeal . . . challenging the Commission's statutory authority to impose self-executing remedies." PUC Consultative Report at 268; see Letter from Julia A. Conover, Verizon, to James J. McNulty, Pa. Pub. Util. Comm'n (June 13, 2001) (App. B, Tab B-4).

⁸⁰ This decrease occurred even though Verizon, over this time, was reporting performance on increased numbers of measurements, as it resolved system problems that had led it to report measurements as Under Development or Under Review. See Guerard/Canny/DeVito Reply Decl. ¶¶ 20, 50; Guerard/Canny/DeVito Decl. ¶ 31. As of April 2001, Verizon reported only one measurement as Under Development and none as Under Review; by contrast, at the time of Verizon's New York application, approximately 15 percent of measurements were reported as Under Development or Under Review. See Guerard/Canny/DeVito Decl. ¶¶ 30-31.

to CLECs in recent months, missing just over six percent of the tens of thousands of performance measurements subject to remedies during that period. See Guerard/Canny/DeVito Reply Decl. ¶ 50; Guerard/Canny/DeVito Decl. ¶ 154. Thus, there is no basis to AT&T's claim that Verizon "mishandles nearly 1 out of every 4 CLEC-initiated transactions." AT&T's Bloss/Nurse Decl. ¶ 73; see Guerard/Canny/DeVito Reply Decl. ¶¶ 51-52.

Although the Performance Assurance Plan devised by the Pennsylvania PUC complies with the Commission's requirements that such a Plan provide "assurance that the local market will remain open after Verizon receives section 271 authorization," Connecticut Order ¶ 76, the Pennsylvania PUC has adopted a "rebuttable presumption" that it will replace the Plan that it devised with the New York Performance Assurance Plan, "made applicable and tailored to Pennsylvania." Guerard/Canny/DeVito Decl. ¶ 148 (internal quotation marks omitted).⁸¹ Verizon has submitted a proposal to the Pennsylvania PUC for modifying the current Plan. See Guerard/Canny/DeVito Reply Decl. Att. 5. Verizon proposed two different Plans to the Commission: one is based on a Plan Verizon has proposed in Virginia and that includes elements of the Texas and New York Plans that the Commission has approved, and the other is the New York Plan with minor modifications. See id. ¶¶ 45, 65. These Plans, which are based on Plans that the Commission has reviewed and approved in its past five section 271 orders, unquestionably satisfy the Commission's requirements. See Connecticut Order ¶ 76;

There is thus no merit to CLEC complaints about Verizon's use of these designations in Pennsylvania. See WorldCom at 14; WorldCom's Kinard Decl. ¶ 24; AT&T's Bloss/Nurse Decl. ¶¶ 28-30.

⁸¹ Contrary to the DOJ's claim (at 15 n.57), this rebuttable presumption is not an "implicit[] recogni[tion]" by the PUC of flaws in the Pennsylvania Plan that it devised. Instead, it both is a part of the PUC's ongoing review of its Plan and follows on the heels of the agreement between Verizon and the CLECs to adopt the New York performance measurements.

Massachusetts Order ¶ 236; New York Order ¶ 432; Kansas/Oklahoma Order ¶ 274; Texas Order ¶ 424.⁸²

Verizon's Proposed Plans. Although the PUC has adopted a "rebuttable presumption" in favor of using the New York Plan in Pennsylvania, Verizon has proposed using a different Plan for Pennsylvania ("Proposed PA Plan"), which is modeled on aspects of both the New York and Texas Plans. This Plan, which is responsive to criticisms raised against the existing Pennsylvania Plan, is fairer to both Verizon and the CLECs, more accurate, and significantly easier to understand and administer than the New York Plan. However, in light of the presumption adopted by the PUC, Verizon has also proposed a slightly modified version of the New York Plan ("Modified NY Plan"), which it suggests that the Pennsylvania PUC adopt if it rejects Verizon's Proposed PA Plan. See Guerard/Canny/DeVito Reply Decl. ¶ 45.

The Proposed PA Plan, which is based on the New York performance measurements that Verizon has proposed that the PUC adopt, differs from the current Pennsylvania Plan in a number of respects. Unlike the current Pennsylvania Plan, the Proposed PA Plan has an annual cap of \$189.2 million, which is equivalent to 36 percent of Verizon's 2000 Net Return in Pennsylvania. See id. ¶ 66; New York Order ¶ 436 (approving New York Plan placing 36 percent of Net Return at risk). Remedies are calculated based on 220 fully disaggregated measurements and take effect if Verizon misses a measurement for a single month. See Guerard/Canny/DeVito Reply Decl. ¶¶ 66-67. Remedies also increase with the severity of a

⁸² CompTel, alone among the commenters, argues that even the New York Plan is inadequate, claiming that Verizon "hit the cap for DSL metrics the first month these measures were in the plan." CompTel at 22. Not only is CompTel's assertion untrue, but, by May 2001, Verizon had improved its performance such that it was required to pay nothing under the DSL mode of entry. See Guerard/Canny/DeVito Reply Decl. ¶ 86.

miss. See id. ¶ 66. Like the current Pennsylvania Plan, remedies also increase with the frequency of a miss and performance is normally evaluated at the CLEC-specific level. See id.

Like the Texas Plan, the Proposed PA Plan includes “per occurrence” (or “per unit”) remedies, “which means that . . . damages or fines are calculated according to the number of incidents that [Verizon] delivers non-compliant performance for a particular measurement.” Texas Order ¶ 422; see Guerard/Canny/DeVito Reply Decl. ¶ 70. And, like the Texas Plan, the Proposed PA Plan also includes some “per measurement” remedies, where remedies go to all CLECs using a product, in proportion to their lines in service, if Verizon misses a measurement assessed at the aggregate level. See Guerard/Canny/DeVito Reply Decl. ¶ 71.

As noted above, in light of the Pennsylvania PUC’s rebuttable presumption in favor of adopting the New York Plan, Verizon has also provided the Pennsylvania PUC with a Modified NY Plan for use in Pennsylvania. This Plan is the same as the New York Plan, with minor modifications. See id. ¶ 75. First, consistent with Verizon’s approved practice in other states, Verizon has reduced the amount at risk under the Plan in proportion to Verizon’s Net Revenue in Pennsylvania, setting a cap of \$189.2 million, which is allocated in the same proportions as in the New York Plan. See id. ¶ 76; Massachusetts Order ¶ 241; Connecticut Order ¶ 77. Second, Verizon has proposed changing the scoring system to provide more confidence when determining that Verizon has missed measurements and to have the scoring of a miss related to the severity of the miss. See Guerard/Canny/DeVito Reply Decl. ¶¶ 77, 79. Under the current New York Plan, Verizon can be deemed to have missed a measurement even when there is a greater than 20 percent chance that random variation caused the apparent disparity, and Verizon is subject to no greater penalties if it misses a measurement by 1 percentage point or by 20. See id. ¶¶ 77-78. Third, Verizon has proposed initially setting the benchmarks for flow through

somewhat lower than in New York, to account for the fact that the Pennsylvania market is less competitively mature than the New York market and CLECs are still less experienced in submitting accurate service orders. See id. ¶¶ 81-82. As noted above, the Commission previously has recognized that Verizon should not be held responsible for orders that fall out for manual handling due to CLEC errors.

Current Pennsylvania Plan. AT&T and WorldCom complain about the structure of the Plan that the Pennsylvania PUC established, repeating the arguments they made in the state proceedings. First, they argue that Tier I of the Plan is not self-executing and that no CLEC has received payments under this portion of the Plan. See AT&T at 62; AT&T's Bloss/Nurse Decl. ¶ 82; WorldCom at 15; WorldCom's Kinard Decl. ¶¶ 25-26. The Pennsylvania PUC established Tier I so that, if a CLEC does not receive a service for which Verizon has missed a performance measurement during that month, the CLEC would be reimbursed for "its actual, out-of-pocket payment on a pro-rated basis." Dec. 31, 1999 Order at 159.⁸³ Because Verizon cannot possibly know what out-of-pocket payments a CLEC has made in anticipation of receiving a service, the PUC held that "recovery cannot occur unless a CLEC can support a claim of out of pocket expenses." Joint Petition of Nextlink Pennsylvania, Inc., et al., for an Order Establishing a Formal Investigation of Performance Standards, Remedies, and Operations Support Systems Testing for Bell Atlantic-Pennsylvania, Inc., Opinion and Order at 68, Docket No. P-00991643 (Pa. Pub. Util. Comm'n entered Sept. 1, 2000) (App. B, Tab R-11); see Guerard/Canny/DeVito Decl. ¶ 158. Verizon is aware of no CLEC having made a request for a refund of these expenses under Tier I. See Guerard/Canny/DeVito Reply Decl. ¶ 55.

⁸³ In addition, Verizon will automatically reimburse CLECs for any service for which CLECs paid, but did not receive for a period greater than 24 hours. See Guerard/Canny/DeVito Decl. ¶ 157; Guerard/Canny/DeVito Reply Decl. ¶ 51.

Next, AT&T and WorldCom rehash their argument that the remedy payment amounts under Tier II are inadequate to deter anticompetitive conduct.⁸⁴ However, the Commission long ago rejected the claim “that liability under the Plan must be sufficient, standing alone, to completely counterbalance [a BOC’s] incentive to discriminate.” New York Order ¶ 435. Instead, the Commission recognized that a performance assurance plan “do[es] not represent the only means of ensuring that [a BOC] continues to provide nondiscriminatory service.” Id.; see Massachusetts Order ¶ 241; Texas Order ¶ 424. Thus, in determining that local markets would remain open to competition after section 271 approval, the Pennsylvania PUC also considered the “functional/structural and non-structural remedies” that it had imposed on Verizon. PUC Consultative Report at 4.

Potential liability under Tier II, moreover, is at least equivalent to that under the New York and Massachusetts Plans and, therefore, is more than sufficient “to provide meaningful incentives to maintain service quality levels.” New York Order ¶ 436; see Guerard/Canny/DeVito Decl. ¶¶ 162-163; Gertner/Bamberger/Bandow Decl. ¶¶ 27-29; Guerard/Canny/DeVito Reply Decl. ¶ 58.⁸⁵ AT&T’s and WorldCom’s arguments to the contrary

⁸⁴ AT&T and WorldCom complain that certain performance measurements – namely, flow through and trunk blockage – do not have remedies associated with them. See AT&T at 56; AT&T’s Bloss/Nurse Decl. ¶ 26; WorldCom at 10-11; WorldCom’s Kinard Decl. ¶¶ 9, 16. In both instances, these measurements are not included in the Plan because the Pennsylvania PUC determined, following extensive proceedings, that they should not be. See Dec. 31, 1999 Order at 64, 99; see also Guerard/Canny/DeVito Decl. ¶ 151. As explained above, the Plan provides Verizon with significant incentives to improve flow through, which has been improving, and there are sound reasons not to include such a measurement within a Plan. See supra at 39-43 & n.41. With respect to trunk blockage, no CLEC complains about Verizon’s performance, which has been excellent. See supra at 16. In any event, as discussed above, Verizon has proposed two Plans to the Pennsylvania PUC that would include these measurements in Pennsylvania. See Guerard/Canny/DeVito Reply Decl. Att. 5.

⁸⁵ The DOJ argues that the Pennsylvania Plan’s penalties do not “closely correlate to the severity of poor performance” and “do not reflect the relative importance of particular metrics to competition.” DOJ Eval. at 15. However, the Pennsylvania Plan’s remedy payments increase

are based on the unsubstantiated presumption that Verizon can “manipulate its performance” on a limited number of performance measures for a limited number of CLECs for limited periods of time. See, e.g., AT&T at 62; WorldCom at 15; WorldCom’s Kinard Decl. ¶¶ 27-28; see also DOJ Eval. at 15 n.60.⁸⁶ The Commission has previously rejected such baseless assertions and should do so again here. See Texas Order ¶ 426. The performance measurements in Pennsylvania are sufficiently interrelated that, if Verizon were intentionally to miss one, it would also miss many others, increasing the remedy payments that it would have to make. See Gertner/Bamberger/Bandow Decl. ¶¶ 21-22. Nor could Verizon target specific CLECs without changing its systems in ways that would be evident to its employees and to regulators; the penalties for such blatant and easily observable discrimination are more than sufficient to deter such conduct. See id. ¶¶ 20, 24-26; see also Guerard/Canny/DeVito Reply Decl. ¶ 57.⁸⁷

with the duration of poor performance. Moreover, the New York Plan, which the Commission has approved three times, also does not vary payments with the severity of poor performance on individual measurements, and only a few portions of that Plan impose penalties based on the importance of those measurements to competition. Nor does the Texas Plan, which the Commission has also approved three times, permit a state commission to shift remedy payments between measurements, a feature that the DOJ argues (at 16) is lacking from the Pennsylvania Plan.

⁸⁶ There is no basis to the DOJ’s claim that the Plan “may also fail to detect widespread discrimination, because it evaluates discrimination for most metrics only on a CLEC-specific basis.” DOJ Eval. at 16. First, as the PUC has recognized, many of the performance measurements are set to standards that “go beyond 271 requirements” – failure to satisfy a measurement does not equate to discrimination on the part of Verizon. PUC Consultative Report at 258. Second, if Verizon has widespread poor performance, it will pay remedies to many CLECs. Third, Verizon reports its aggregate performance to the Pennsylvania PUC each month, providing it with the data necessary to detect any of the potential discrimination that the DOJ speculates might go undetected in CLEC-specific performance reports. The DOJ’s concerns with the escrow provisions of the Pennsylvania Plan are similarly misplaced. See DOJ Eval. at 16 n.63. Equivalent provisions are found in the New York Plan. See Guerard/Canny/DeVito Reply Decl. ¶ 64.

⁸⁷ WorldCom argues that Verizon has not calculated its Tier II remedies correctly. See WorldCom at 16; WorldCom’s Kinard Decl. ¶ 31. Although WorldCom is correct that Verizon failed to calculate a Tier II remedy for one of the 110 performance measurements in the Plan in April 2001, that represents only one of the roughly 8800 calculations that Verizon makes each

3. The Former GTE Territories.

AT&T argues (at 80-81) that this Application is not in the public interest because Verizon has not demonstrated that it has opened its local markets in the former GTE territories in Pennsylvania. This is nonsense.

By its plain terms, the Act does not require Verizon to make a showing of checklist compliance with respect to the GTE local operating companies in Pennsylvania in order to obtain section 271 authorization for this state. The checklist applies only to Bell operating companies (or "BOCs"), see 47 U.S.C. § 271(d)(3), and the GTE local operating companies in Pennsylvania are not BOCs, but instead, as AT&T concedes (at 81), are "affiliate[s]" of BOCs, see 47 U.S.C. § 153(4)(C), and are not required to make a showing of checklist compliance.⁸⁸

AT&T further argues that, because "Verizon has made no effort to show that provision of in-region long distance service in the former GTE areas of Pennsylvania would be consistent either with the public interest or with Section 272," the Commission should not "grant Verizon North authority to offer long distance services in Pennsylvania." AT&T at 81. AT&T's

month in determining whether it owes remedy payments. See Guerard/Canny/DeVito Reply Decl. ¶ 59. Verizon intends to pay WorldCom the remedy payment missed in April 2001. See id. WorldCom also argues that Verizon failed to pay it the \$25,000 remedy payment for a measurement that, as of May 2001, Verizon had missed for four consecutive months. See WorldCom's Kinard Decl. ¶ 31. The enhanced remedy payments, however, go into effect beginning with July 2001 performance data, so Verizon was obligated to pay only \$5,000 in remedy payments; WorldCom, however, was free to petition the Pennsylvania PUC to increase the required payment up to \$25,000. See Letter from James J. McNulty, Pa. Pub. Util. Comm'n, to Julia A. Conover, Verizon, at 3-4 (June 6, 2001) (App. B, Tab A-3); Guerard/Canny/DeVito Decl. ¶ 160; Letter from Julia A. Conover, Verizon, to James J. McNulty, Pa. Pub. Util. Comm'n, Att. at 5 (May 23, 2001) (App. B, Tab P-12).

⁸⁸ AT&T's suggestion that, as part of its public interest showing, Verizon must demonstrate that it has "integrated its OSS systems so that CLECs have nondiscriminatory and equal access to OSS throughout the former GTE as well as the former Bell Atlantic areas of Pennsylvania," AT&T at 80, is simply AT&T's attempt to require a showing that GTE complies with the checklist, when the statute contains no such requirement.

argument simply misreads section 271. First, the instant Application was filed on behalf of Verizon Pennsylvania (formerly Bell Atlantic-Pennsylvania, Inc.) and four separate affiliates that will provide in-region, long distance services after approval of this Application.⁸⁹ Second, no request for authorization for Verizon North (the former GTE affiliate that operates in Pennsylvania) to offer long distance service in Pennsylvania is needed.⁹⁰ Once Verizon Pennsylvania (a BOC) receives authorization under section 271 to provide in-region, long distance service in Pennsylvania, Verizon North (its affiliate) may provide in-region, long distance service in Pennsylvania as well. See 47 U.S.C. § 271(b)(1) (“any affiliate of that Bell operating company[] may provide [in-region,] interLATA services . . . if the Commission approves the application of such company”). Although section 271 permits an affiliate of a BOC to seek authorization under that section *before* the BOC does, see id. § 271(d)(1), section 271 does not require the affiliate to do so *after* the BOC has received approval under section 271. Instead, just as GTE was permitted to continue providing long distance service in New York after it became an affiliate of Bell Atlantic (which had already received approval to provide long distance service in New York) without filing an application for section 271 approval,⁹¹ so too

⁸⁹ With respect to section 272, Verizon has fully demonstrated that, to the extent it provides long distance service after approval, it will do so only through affiliates that comply fully with the requirements of section 272. See Browning Decl. No CLEC has challenged this showing.

⁹⁰ In addition, because a BOC applies for section 271 authorization on a state-wide basis, see 47 U.S.C. § 271(d)(1), there is no basis to AT&T’s implication that Verizon Pennsylvania must make a showing under the public interest test that is unique to the areas in which Verizon North is the incumbent local exchange carrier. See Connecticut Order ¶ 75 (“We find that Verizon’s Connecticut market is open to competition and that Verizon’s entry into long distance in Connecticut will benefit customers.”).

⁹¹ Bell Atlantic/GTE Merger Order ¶¶ 27, 442.

may Verizon North provide long distance service in Pennsylvania after Verizon Pennsylvania's Application is approved.⁹²

C. Permitting Verizon To Provide InterLATA Service in Pennsylvania Will Increase Long Distance Competition.

Verizon demonstrated in its Application that its entry into the long distance market in Pennsylvania will benefit consumers, just as consumers in New York and Massachusetts have benefited from Verizon's entry in those states. See Taylor Decl. ¶¶ 14-15, 21. The Pennsylvania PUC likewise found that "allowing Verizon PA into the in-region long distance market will provide additional public benefit by giving Pennsylvania customers greater choice in that market." PUC Consultative Report at 4. That greater choice leads to savings for consumers: according to the most recent comprehensive study, New Yorkers who have switched to Verizon long distance have saved up to \$284 million annually. See Taylor Decl. Att. 3. And consumers have actively embraced this greater choice, with Verizon now serving 2.2 million long distance lines in New York, an increase of nearly 600,000 lines in the first half of 2001.⁹³ In

⁹² Covad cites a recent audit report as a basis for challenging Verizon's compliance with the Genuity conditions of the Bell Atlantic/GTE merger. See Covad at 18. The Commission already considered this same audit in the context of its Connecticut Order and concluded that a section 271 proceeding was not the proper forum in which to review the audit findings. See Connecticut Order ¶ 79. In any event, the portions of the auditor's report that Covad quotes contain no criticism of Verizon, but rather state that "*Genuity management did not provide*" certain evidence that the auditors sought. See Audit Report at 3 (emphasis added), attached to Letter from Susan Browning, Verizon, to Magalie Roman Salas, FCC (June 1, 2000). Verizon was fully forthcoming with the auditors, who found that, with the exception of a handful of instances of untimely billing and collections practices for which Verizon has taken corrective steps, "Verizon complied, in all material respects, with the Genuity Conditions during the period June 30, 2000 through December 31, 2000." Id.

⁹³ See Michael J. Balhoff, et al., Legg Mason – Equity Research, Section 271 Relief: Bells Race IXCs/Each Other for New Markets/Revenues Table 4 (June 24, 2001); Verizon News Release, Verizon Communications Second Quarter Earnings Highlighted by Strong Long-Distance and Wireless Sales (July 31, 2001).

Massachusetts, more than 250,000 customers have taken advantage of Verizon's long distance offerings in the first two months that Verizon has provided service in that state.⁹⁴

No CLEC challenges this conclusion, which by now is unassailable. See Massachusetts Order ¶ 234 ("BOC entry into the long distance market will benefit consumers and competition"). Nor have CLECs challenged the well-documented link between BOC entry into the long distance market and increased local competition. See FCC News Release, supra note 68 ("States with long distance approval show [the] greatest competitive activity."); Application at 92-93.

In sum, Verizon's entry into the long distance business unquestionably will produce significant procompetitive benefits for consumers in Pennsylvania.

⁹⁴ See Verizon News Release, supra note 93.

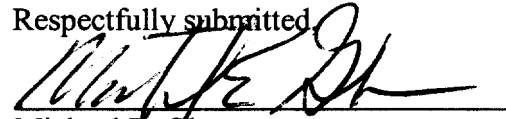
CONCLUSION

Verizon's application to provide interLATA service originating in Pennsylvania should be granted.

Mark L. Evans
Evan T. Leo
Scott H. Angstreich
Kellogg, Huber, Hansen, Todd &
Evans, P.L.L.C.
Sumner Square
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900

James G. Pachulski
TechNet Law Group, P.C.
1100 New York Avenue, N.W.
Suite 365
Washington, D.C. 20005
(202) 589-0120

Respectfully submitted,

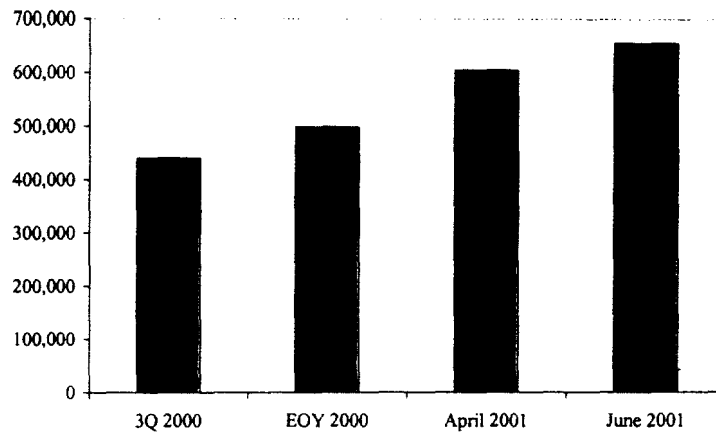


Michael E. Glover
Karen Zacharia
Leslie A. Vial
Donna M. Epps
Joseph DiBella
Verizon
1320 North Court House Road
Eighth Floor
Arlington, Virginia 22201
(703) 974-2944

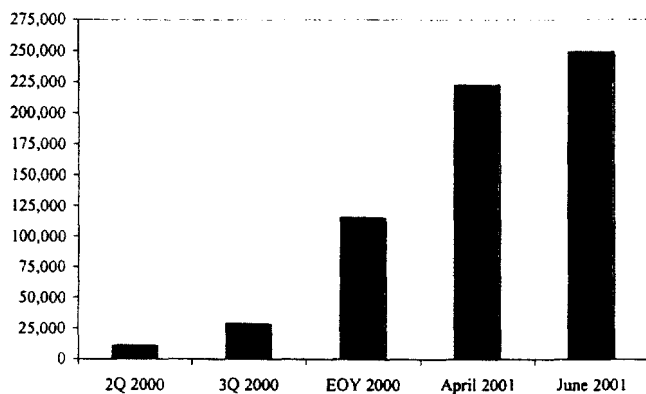
Julia A. Conover
Verizon Pennsylvania Inc.
1717 Arch Street
32nd Floor
Philadelphia, Pennsylvania 19103
(215) 963-6001

Attachment A. Local Competition in Pennsylvania

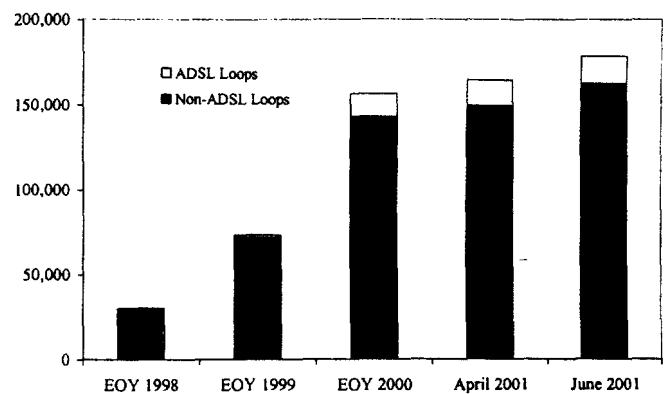
CLEC Facilities-Based Lines (E911 Listings)



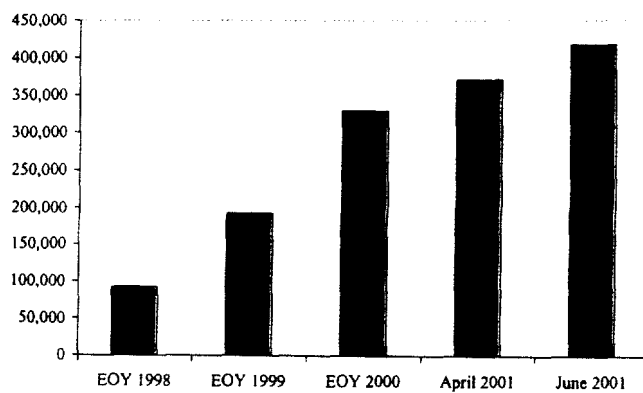
CLEC UNE-Platforms



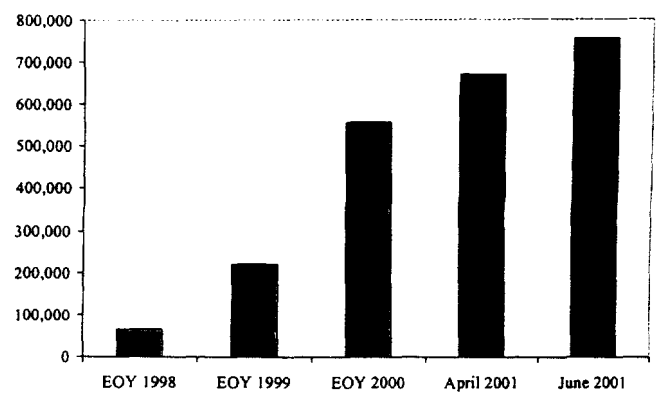
CLEC Unbundled Loops



CLEC Interconnection Trunks



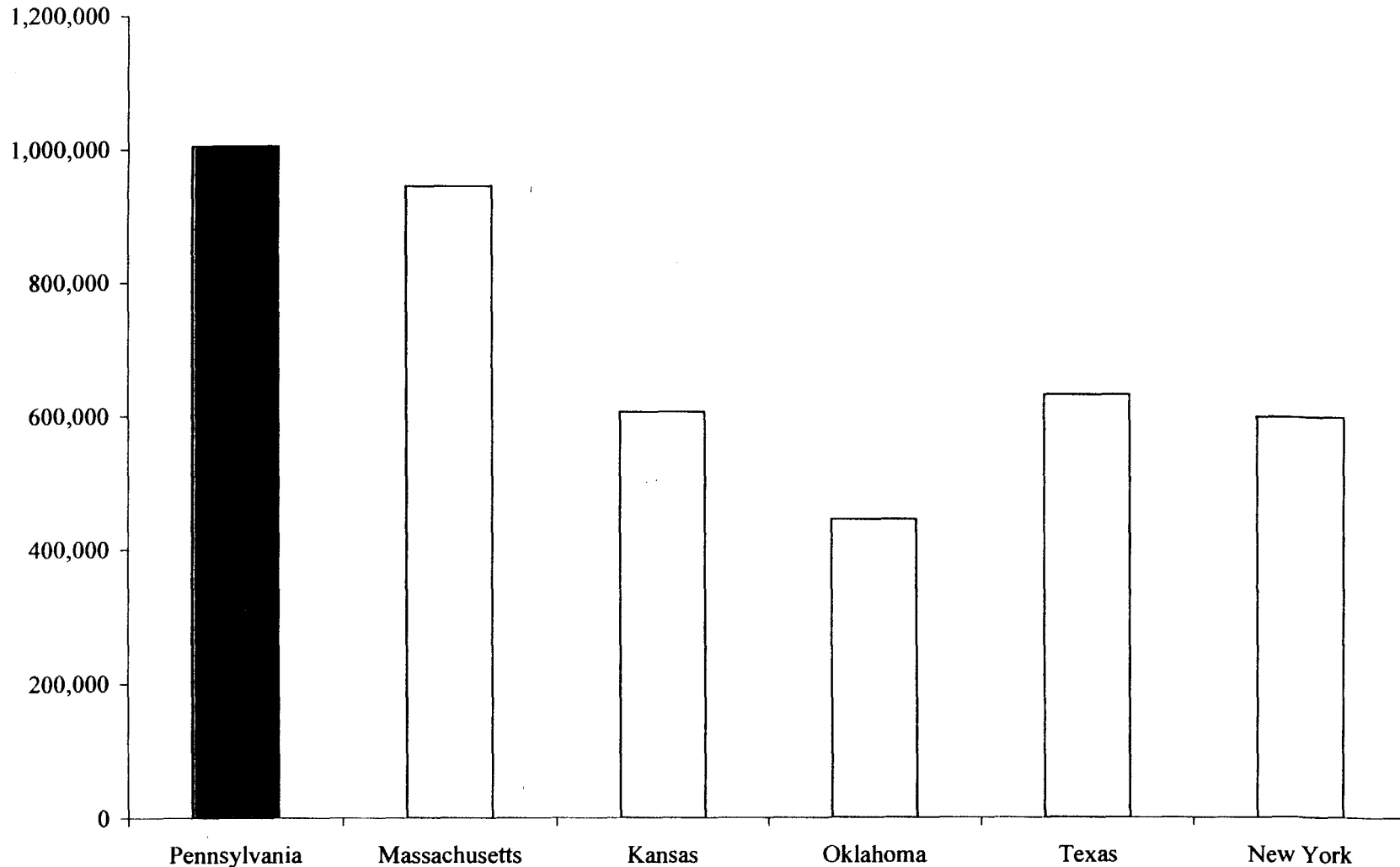
CLEC Ported Numbers





B

Attachment B. Proportionate Total CLEC Lines (Facilities-Based, UNE-P, DSL Loops, Resale) at Time of Section 271 Application



Numbers have been adjusted relative to the number of BOC switched access lines in each state.

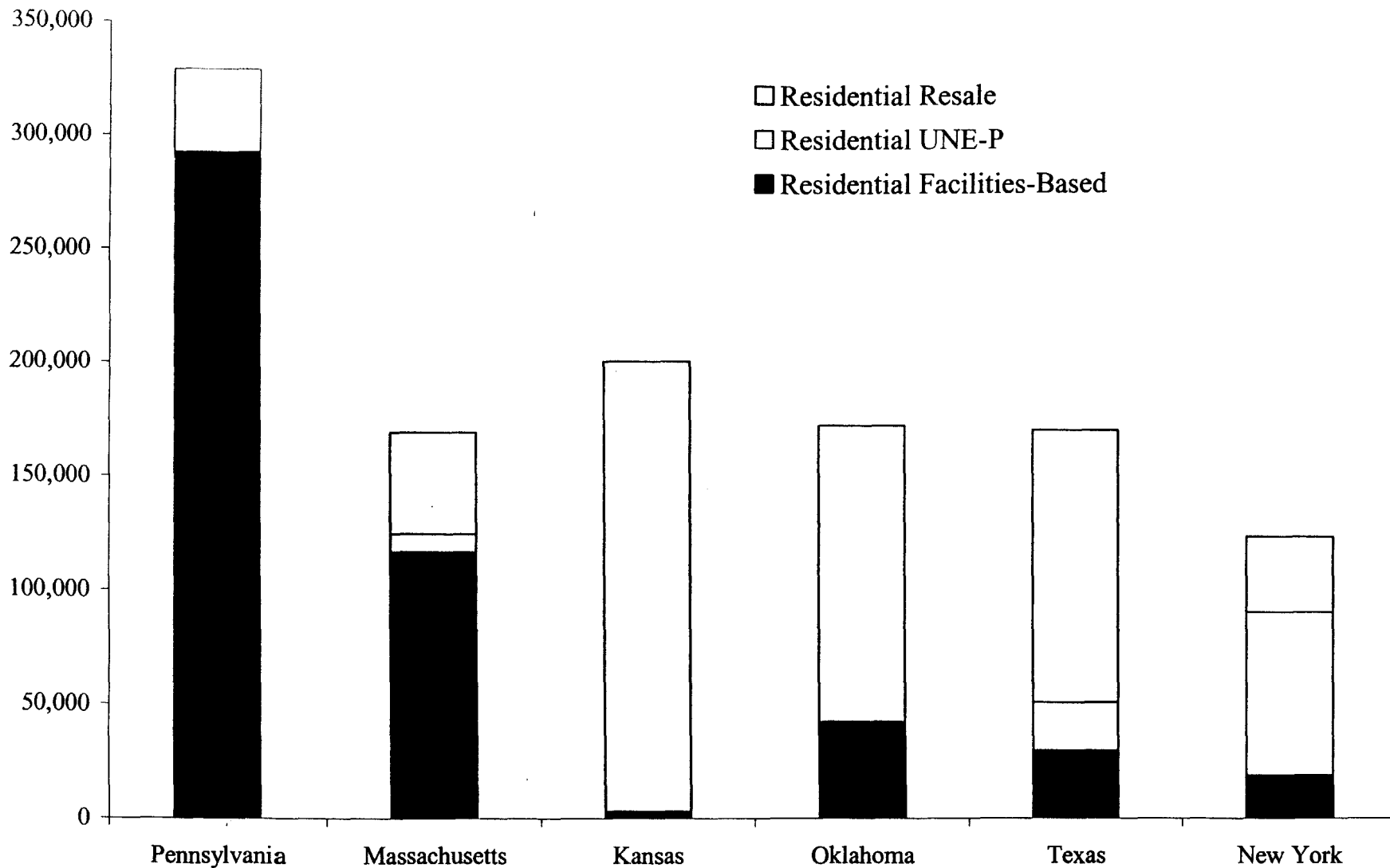
Sources: *New York* – 1.1 million (CLEC lines) and 12 million (Bell Atlantic lines). See New York Order ¶ 14; FCC ARMIS 1999. *Texas* – 960,000 (CLEC lines) and 9.6 million (SBC lines). See SBC-TX 271 Supp. Aff. of John S. Habeeb, Att. A (FCC filed Apr. 5, 2000); FCC ARMIS 1999. *Kansas* – 133,000 (CLEC lines) and 1.4 million (SBC lines). See SBC Kansas/Oklahoma Application at 15, Fig. 1 (FCC filed Oct. 26, 2000); FCC ARMIS 2000. *Oklahoma* – 116,000 (CLEC lines) and 1.6 million (SBC lines). See SBC Kansas/Oklahoma Application at 18, Fig. 2 (FCC filed Oct. 26, 2000); FCC ARMIS 2000. *Massachusetts* – 689,000 (CLEC lines) and 4.6 million (Verizon lines). See VZ-MA 271 Decl. of William E. Taylor, Att. A, Ex. 2 (FCC filed Sept. 22, 2000); FCC ARMIS 2000.



C



Attachment C. Residential Competition in Pennsylvania



Numbers have been adjusted relative to the number of residential BOC switched access lines in each state.

Sources: *New York* – 237,000 (CLEC residential lines) and 7.7 million (Bell Atlantic residential lines). See New York Order ¶ 14; FCC ARMIS 1999. *Texas* – 268,000 (CLEC residential lines) and 6.3 million (SBC residential lines). See SBC-TX 271 Supp. Aff. of John S. Habib ¶ 7 (FCC filed Apr. 5, 2000); FCC ARMIS 1999. *Kansas* – 46,000 (CLEC residential lines) and 940,000 (SBC residential lines). See Kansas/Oklahoma Order ¶ 4; FCC ARMIS 2000. *Oklahoma* – 49,000 (CLEC residential lines) and 1.15 million (SBC residential lines). See Kansas/Oklahoma Order ¶ 5; FCC ARMIS 2000. *Massachusetts* – 121,000 (CLEC residential lines) and 2.9 million (Verizon residential lines). See VZ-MA 271 Decl. of William E. Taylor, Att. A, Ex. 2 (FCC filed Sept. 22, 2000); FCC ARMIS 2000.